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**Great Lakes Tissue Company and United Paperworkers International Union, AFL-CIO, CLC.**  
Case 7-CA-40593

July 22, 1998

**DECISION AND ORDER**

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on January 22, 1998, the General Counsel of the National Labor Relations Board issued a complaint on February 4, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 7-RC-20896.<sup>1</sup> (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer admitting in part and denying in part the allegations in the complaint.<sup>2</sup>

On June 10, 1998, the Acting General Counsel filed a Motion for Summary Judgment.<sup>3</sup> On June 11, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answers the Respondent admits its refusal to bargain, but attacks the validity of the certification.

All representation issues raised by the Respondent were or could have been litigated in the prior represen-

tation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in Cheboygan, Michigan, has been engaged in the manufacture and nonretail sale of tissue paper. During the year ending December 31, 1997, the Respondent, in the course and conduct of its business operations, purchased and received at its Cheboygan facilities goods valued in excess of \$50,000 directly from points located outside of the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held September 10 and 11, 1996, the Union was certified on September 18, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including boilerhouse and warehouse employees, employed by the Respondent at its Cheboygan, Michigan facilities; but excluding office clerical, managerial and sales employees, and guards, professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

Since about December 4, 1997, the Union has requested the Respondent to bargain and, since that date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

<sup>1</sup> Member Hurtgen did not participate in that decision.

<sup>2</sup> In its amended answer, the Respondent, with respect to the jurisdictional facts alleged in par. 2 of the complaint, admits only that it is a corporation located in Cheboygan, Michigan, and that it manufactures tissue paper, and with respect to the labor organization status of the Union alleged in par. 5 of the complaint, admits only that the Union purports to be a labor organization. However, by executing the Stipulated Election Agreement in Case 7-RC-20896, the Respondent stipulated to the factual pleadings set forth in par. 2 of the complaint and the labor organization status of the Union.

<sup>3</sup> In its amended answer, the Respondent states that it "does not have information sufficient to either admit or deny the allegations concerning the service of the charge." The Acting General Counsel has attached as an exhibit to his Motion for Summary Judgment an affidavit of service by a Board agent certifying that the charge was served on the Respondent on January 22, 1998. The Respondent has not contested the authenticity of this exhibit. Accordingly, we find that service of the charge has been established. *Electrical Workers IBEW Local 11 (Anco Electrical)*, 273 NLRB 183, 191 (1984).

## CONCLUSION OF LAW

By refusing on and after December 4, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Great Lakes Tissue Company, Cheboygan, Michigan, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with United Paperworkers International Union, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees, including boilerhouse and warehouse employees, employed by the Respondent at its Cheboygan, Michigan facilities; but excluding office clerical, managerial and sales employees, and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Cheboygan, Michigan, copies of the at-

tached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 4, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 22, 1998

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Sarah M. Fox, Member

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Wilma B. Liebman, Member

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Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Paperworkers International Union, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees, including boilerhouse and warehouse employees, employed by us at our Cheboygan, Michigan facilities; but excluding office clerical, managerial and sales employees, and guards, professional employees and supervisors as defined in the Act.

GREAT LAKES TISSUE COMPANY